FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 674

THE ASIATIC PETROLEUM COMPANY
(Philippine Islands), Limited,
Petitioner,

vs.

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

BRIEF FOR RESPONDENT

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PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

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Respondent.

BRIEF FOR RESPONDENT

THE CASE

Petition for writ of certiorari to the Supreme Court of the Philippine Islands to review the final judgment of that court entered on July 26, 1935, affirming the judgment of the Court of First Instance of Manila dismissing petitioner's application for a writ of mandamus to require the respondent to "liquidate" certain "drawback entries" filed by petitioner under section 21, Philippine Tariff Act of 1909 (36 Stat. 130, 176) for import duties paid by petitioner on certain quantities of fuel oil imported into the Philippine Islands and sold to, and used for the propulsion

of, certain vessels "of foreign registry" engaged in commerce between the Philippine Islands and "foreign countries."

OPINIONS BELOW

The judgment of the Insular Supreme Court (R. 163), affirming the judgment of the Court of First Instance, is based upon its opinion (R. 134-143) to the effect that customs drawbacks are not allowable under section 21 of the Philippine Tariff Act of 1909 on account of fuel oil used for the propulsion of vessels engaged in trade with foreign countries *except vessels of American or Philippine registry*. (R. 142.)

JURISDICTION

The Philippine Independence Act of March 24, 1934 (48 Stat. 456, 461, 462), contains the following provision:

> Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands * * * (6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

The Court is requested to take judicial notice of the following facts:

(1) That the Philippine Independence Act of March 24, 1934, was accepted by concurrent resolution of the Philippine Legislature, and thereby became effective, on May 1, 1934 (see sec. 17, Act of

March 24, 1934, 48 Stat. 465; Official Gazette, Philippine Islands, Vol. XXXIII, No. 79, Jul. 2, 1935).

(2) That pursuant to the provisions of said Independence Act the Government of the Commonwealth of the Philippines, under its own Constitution adopted by the people of the Philippines on May 14, 1935 (see Official Gazette, Philippine Islands, Vol. XXXIII, No. 92, Aug. 1, 1935), was duly inaugurated on November 15, 1935, by proclamation (No. 2148) of the President of the United States.

No question under the Philippine Constitution is involved in the case at bar. The jurisdiction of this court rests, therefore, upon sections 7 and 8 (a) of the Act of February 13, 1925 (43 Stat. 936, 940), which read:

> Sec. 7. That in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review.
>
> Sec. 8. (a) That no writ of error, appeal, or writ of certiorari, intended to bring any judg-

ment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months: *Provided*, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court.

THE RESPONDENT CHALLENGES THE JURISDICTION OF THIS COURT UPON THE GROUND THAT NO QUESTION UNDER THE CONSTITUTION, OR ANY STATUTE OR TREATY OF THE UNITED STATES IS INVOLVED, AND THE VALUE IN CONTROVERSY IS LESS THAN $25,000.

No question involving the Constitution or any treaty of the United States has been raised here, and the respondent contends that:

Section 21 of the Philippine Tariff Act of 1909 is an insular law and not a statute of the United States within the purview of section 7 of the Act of February 13, 1925, supra.

ARGUMENT ON QUESTION OF JURISDICTION

I.

UNDER THE PROVISIONS OF THE PHILIPPINE ORGANIC ACT OF AUGUST 29, 1916 (39 STAT. 545), THE LAW HERE IN QUESTION (SEC. 21, PHILIPPINE TARIFF ACT OF 1909) CEASED TO BE A STATUTE OF THE UNITED STATES AND BECAME AN INSULAR LAW SUBJECT TO AMENDMENT OR REPEAL BY THE PHILIPPINE LEGISLATURE

The pertinent provisions of the Organic Act are as follows (39 Stat. 547, 548):

Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the

Philippine Islands, except when they specifically so provide, or it is so provided in this Act.

Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, *until altered, amended, or repealed by the legislative authority herein provided* or by Act of Congress of the United States. (Emphasis supplied.)

Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act:

* * * * *

Sec. 10. That while this Act provides that the Philippine Government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: *Provided,* That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States * * *.

The purpose of the Organic Act as expressed in its title was, *inter alia,* "to provide a more autonomous government for those islands." It was the

manifest intent by the provisions of the act above cited, to change the character of the laws then in force, which had been enacted by the Congress of the United States for the government of the Philippines, from Federal statutes to Insular laws, subject to amendment or repeal by the Insular Legislature. This must be so for Congress cannot delegate its legislative powers. *See Panama Refining Co.* vs. *Ryan,* decided by this Court January 7, 1935 (293, U. S. 388) where this principle was reiterated as follows:

> "The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested."

A careful examination of the United States Statutes at Large (Vols. 39 to date) fails to disclose any modification, amendment, or repeal of any portion of the Philippine Tariff Act of 1909 by the Congress of the United States since the passage of the Philippine Organic Act of 1916 (39 Stat. 545) except as to section 12 (36 Stat. 173) relating to trade relations between the Philippines and the United States, the control of which was specifically reserved by Congress in section 10 of the Organic Act above cited (39 Stat. 548). See Act of June 17, 1930 (46 Stat. 685, U. S. C. A. 19: 1301).

During the same period said Tariff Act has been amended by the Philippine Legislature with approval of the President of the United States by not less than nineteen separate acts (See Philippine Public Laws, Vol. 29, table at pages CIX and CX)

the earliest of which (No. 2778) was passed May 6, 1918.

The Philippine Tariff Act is not included in the Index to the Federal Statutes published pursuant to the Act of March 3, 1927 (44 Stat. 1401), and no part of it, except that relating to trade relations with the United States above cited, is embodied in the Code of Laws of the United States of America. See U. S. C. 1934, Table of Statutes at Large, pages 2313 and 2360. See also, note to section 1012, title 48, U. S. C. A. as follows:

> "(Philippine tariff of 1909, omitted from the Code as being local in nature)."

The entire administration of the Act is vested in the insular authorities. Section 25 (36 Stat. 177) reads:

> Section 25. That the insular collector of customs shall, subject to the approval of the secretary of the department having jurisdiction over the customs service, make all rules and regulations necessary to enforce the provisions of this Act.

Attention is invited to the fact that the case of *Gsell* vs. *Insular Customs Collector* (239 U. S. 93), where it was held by this Court that the Philippine Tariff Act of August 5, 1909 "is a statute of the United States," was decided on November 15, 1915, several months prior to the passage of the Organic Act. The specific question is not believed to have been raised in any other case in this Court either before or since the Organic Act of 1916 became effective. No jurisdictional question was raised

in *Wright* vs. *Ynchausti and Company* (272 U. S. 640) for the reason that, in that case, the amount in controversy was more than $25,000, viz., 159,960 pesos.

II.

UPON THE INAUGURATION OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES THE STATUTE IN QUESTION WAS REPEALED AS A STATUTE OF THE UNITED STATES

The Philippine Independence Act of March 24, 1934 (48 Stat. 456, 464) provides:

> Sec. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States * * *. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

Section 2, Article XV of the Constitution of the Commonwealth of the Philippines provides that:

> All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the National Assembly * * *.

It will be noted that by the repealing clause of section 15 of the Independence Act above cited, ex-

cept as otherwise provided in that act, all laws or parts of laws relating to the former government of the Philippine Islands *and its administration* were repealed on November 15, 1935, when the Commonwealth Government was inaugurated.

The Tariff Act of 1909 was an act to "raise revenue" for the Philippine government—clearly an act relating to the *administration* of that government—and, were it not for the saving clause in the first sentence of said section 15, would be wholly repealed. The saving clause has the effect to continue the Tariff Act, and all laws of like nature, in force, *as laws of the Commonwealth of the Philippines* until the Philippine National Assembly, or the Congress of the United States, otherwise provides. The Congress of the United States has not legislated upon the subject of Philippine tariffs since the Independence Act was passed (nor indeed, as indicated under I above, since the Organic Act of 1916), and by section 2, Article XV, of the Philippine Constitution, the statute involved in this case has been, in effect, adopted as a law of the Commonwealth of the Philippines.

It follows that the interpretation placed upon the statute in question by the Supreme Court of the Philippines is not subject to review by this Court.

ARGUMENT UPON THE MERITS

I.

IF THE COURT TAKES JURISDICTION, THE QUESTION INVOLVED IS OF PURELY LOCAL CONCERN, AND THIS COURT, THEREFORE, WILL NOT OVERRULE THE LOCAL TRIBUNAL UNLESS ITS DECISION IS CLEARLY ERRONEOUS

Santa Fe Central Ry. Co. vs. *Friday,* 232 U. S. 694.
Nadal vs. *May,* 233 U. S. 447.
Villanueva vs. *Villanueva,* 239 U. S. 293.
Cardona vs. *Quinones,* 240 U. S. 83.
Ker vs. *Couden,* 223 U. S. 268.
Ibanez vs. *Hongkong Banking Corp.,* 246 U. S. 627.
Philippine Sugar etc. Co. vs. *Philippine Islands,* 247 U. S. 385.
Phoenix Ry. Co. vs. *Landis,* 231 U. S. 578.

The terms "local concern," or "local law," as used in the authorities above cited are not confined, in application, to questions arising under laws enacted by the local legislature.

Santa Fe Central Ry. Co. vs. *Friday, supra,* involved the jurisdiction of the courts of the territory of New Mexico over an action brought under the Federal Employer's Liability Act of 1906 (34 Stat. 232).

In *Ker* vs. *Couden, supra,* the question involved arose under Spanish law and the decisions of the Courts of Spain.

It is the established doctrine of this Court that, in the absence of clear error, decisions of the insular courts will not be disturbed unless there is involved some broad question, such as the rights of persons or property under the organic laws (see *In Yu Cong Eng* vs. *Trinidad,* 271 U. S. 500), international re-

lations (see *Ingenohl* vs. *Olsen and Co.*, 273 U. S. 541), or the like.

In *Phoenix Ry. Co.* vs. *Landis, supra,* this Court speaking through Mr. Justice Hughes, said:

> "This Court has frequently stated that it is disposed to accept the construction which the territorial court has placed upon a local statute." (231 U. S. 579, citing *Sweeney* vs. *Lomme,* 22 Wall. 208, 213; *Fox* vs. *Haarstick,* 156 U. S. 674, 679; *Northern Pacific R. R. Co.* vs. *Hambly,* 154 U. S. 349, 361; *Copper Queen Mining Co.* vs. *Arizona Board,* 206 U. S. 474, 479; *Lewis* vs. *Herrera,* 208 U. S. 309, 314; *English* vs. *Arizona,* 214 U. S. 359, 361; *Santa Fe County* vs. *Coler,* 215 U. S. 296, 305; *Albright* vs. *Sandoval,* 216 U. S. 331, 339; and *Clason* vs. *Matko,* 223 U. S. 646, 653).

In practically all the precedents cited the construction placed upon the statutes in question by the lower courts was not free from doubt.

The case of *English* vs. *Arizona, supra,* is particularly applicable here for the reason that the statute involved was a revenue law. In that case the Court held (quoting from the headnote) that:

> "Where there is doubt as to the construction of a statute of a Territory this court leans towards the construction given by the Supreme Court of the Territory * * * and in this case this court accepts the decision of the Supreme Court of Arizona in construing a revenue statute of that Territory."

The Respondent contends that, under the established doctrine of this Court, as enunciated in the

precedents above cited, in the circumstances of this case, the construction placed upon the statute in question by the insular courts should be accepted.

II.

REPLYING TO PETITIONER'S "REASONS FOR GRANTING THE WRIT" (PETITIONER'S BRIEF, PP. 5-7) THE RESPONDENT SAYS:

1. (Petitioner's Brief, p. 5). Decisions of the United States Court of Claims are not binding upon the Supreme Court of the Philippine Islands.

The United States Supreme Court has no jurisdiction to review a decision of the Philippine Supreme Court upon the ground merely that such decision is in conflict with a decision of a court in another jurisdiction.

There is no "reviewable conflict" here. The decision sought to have reviewed was rendered under a law of the Philippine Islands. The *Kennedy* case (23 Ct. Cl. 363), cited by petitioner, arose under a Federal statute which had no application in the Philippines.

This Court has in several instances adopted the construction placed upon territorial laws by territorial courts though not in harmony with the decisions of courts of other jurisdictions as to the meaning of similar statutes. *Copper Queen Mining Co.* vs. *Arizona Board, supra* (206 U. S. 474, 479); *Lewis* vs. *Herrera, supra* (208 U. S. 309, 314).

In *Ker* vs. *Couden, supra,* (223 U. S. 268, 279) the Court, speaking of "the respect that we must feel for the concurrent opinion of both the courts below,"

remarked that "of course we are dealing with the law of the Philippines, not with that which prevails in this country."

2. (Petitioner's Brief, p. 6). No federal question is involved here. Whether the statute under consideration was intended to "foster and give impetus to the establishment and promotion in these Islands of a merchant marine," or to "aid local manufacture and trade," its application and effect are purely local—more so, indeed, under the interpretation contended for by petitioner than under that given it by the insular courts.

The case of *Campbell* vs. *U. S.* (107 U. S. 407) cited by petitioner to this point, arose under a statute enacted in 1861, long since superseded, and having no relation in fact or principle to the Philippine Tariff Act of 1909. Likewise, *Swan* vs. *Finch* (190 U. S. 143) also cited by petitioner in this connection, involved a statute long since obsolete, not applicable to the Philippines.

3. (Petitioner's Brief, p. 7). This point was not raised in the Court of First Instance, nor in the Supreme Court until after its decision was rendered (R. 134, 154). This matter is not covered in the "Stipulation of Facts" (R. 28).

In the statement of facts in petitioner's brief (pp. 3, 4) it is claimed that the insular courts were required by section 275 of the Philippine Code of Civil Procedure to take judicial notice of the "earlier ruling" of the Insular Collector of Customs. However that may be, the record does not affirmatively show

what such "earlier ruling" was. The point, therefore, is not before this Court. It is purely a matter of speculation.

Respectfully submitted

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